

REMARKS

Claims 1-27 are pending in the present application. In the above amendments, claims 1-27 have been amended. Applicants believe these changes add no new matter to the application and are fully supported by the original disclosure.

The 4/19/2005 Office Action rejected Claims 1-27 under 35 U.S.C. § 102(b) as being anticipated by Kim et al. (European Patent Application No. EP 1,199,834, hereinafter, *Kim*).

As an initial matter, Applicants submit that the subject matter claimed in the present application is entitled to the priority date of provisional application 60/404,379, filed on 8/19/2002. Accordingly, *Kim* is not available as a reference under § 102(b), as it was published 4/24/2002, which is not one year prior to the priority date of the present application. While *Kim* may be available as a reference under § 102(a), Applicants submit that *Kim* does not anticipate claims 1-27, as discussed below.

Kim does not disclose transmitting a payload of data bits to a remote location utilizing incremental redundancy by transmitting a second packet using transmission format selected “as a function of a computed expected total energy received at the remote location due to transmission of” a first subpacket, as claimed in independent claims 1 and 12. Nor does *Kim* disclose “means for determining a target transmission energy level as a function of a computed level of expected energy received at the remote location” or “means for selecting a transmission format for a second subpacket as a function of the target transmission level” as claimed in independent claim 23. Rather, *Kim* discloses “a system that selectively employs a packet code combining scheme and a packet diversity combining scheme according to the data rates” to transmitted and re-transmitted packets. See paragraphs [0032]-[0034].

Accordingly, Applicants submit that claims 1, 12, and 23, as well as their dependents, are patentable over *Kim* and request withdrawal of this rejection.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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